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Chair

The Honourable Wayne Easter

Standing Committee on Finance

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● (1530)

[*English*]

The Chair (Hon. Wayne Easter (Malpeque, Lib.)): I call the meeting to order. Pursuant to Standing Order 108(2), we are conducting a study of consumer protection and oversight in relation to schedule I banks.

As members may recall, we heard from the Financial Consumer Agency of Canada previously, but we said that after they finished their report we would invite them back. That is the purpose of this meeting.

With us we have Ms. Tedesco, commissioner, executive services. We also have Mr. Bilodeau, director, supervision and promotion. Both of these witnesses are with the Financial Consumer Agency of Canada.

Welcome. The floor is yours.

Ms. Lucie Tedesco (Commissioner, Executive Services, Financial Consumer Agency of Canada): Good afternoon, Mr. Chair, vice-chairs, and members of the committee. Thank you for inviting me once again to lend my voice to your study on consumer protection and oversight in relation to schedule I banks.

With me today is my colleague, as Mr. Chair indicated, Mr. Richard Bilodeau, who is the managing director of the agency's supervision and promotions branch. We are both very pleased to be here today to answer your questions on FCAC's report published in March entitled "Domestic Bank Retail Sales Practices Review". The report details the findings of our latest industry review.

I must say that this review was the most significant supervisory initiative we have ever undertaken at the agency since we were created in 2001. For nine months a dedicated team of staff under Richard's direction worked diligently towards achieving the review's objective, which was to identify and understand the drivers of sales conduct, which could increase the risk of mis-selling to consumers and breaching market conduct obligations. The scope of this research covered the banks' sales targets and incentive programs and the controls banks have in place to mitigate these risks associated with sales practices.

[*Translation*]

The FCAC reviewed more than 4,500 complaints related to sales practices to gain a better understanding of the issues consumers experience when acquiring bank products and services. We reviewed over 100,000 pages of bank documents on matters ranging from training, performance and sales management, to compliance, risk management and internal audit.

And we interviewed more than 600 bank employees, including 200 from 30 branches. Our sample included board chairs and directors, senior management, middle management and frontline customer service representatives in call centres and branches.

[*English*]

The key findings as set out in our report are as follows: Retail banking culture is focused predominantly on selling products and services, increasing the risks that consumers' interests may not always be given the appropriate priority. The design of banks' financial and non-financial incentives, sales targets, and scorecards may increase the risk of mis-selling and breaching market conduct obligations. Certain products, business practices, and distribution channels present higher-risk sales practices. Governance frameworks do not manage sales practice risk effectively. Finally, controls that mitigate the risks associated with sales practices are underdeveloped.

The report does not address potential breaches of consumer provisions of the Bank Act and its regulations. If potential breaches were identified during the course of our review, the allegations are currently being investigated separately as part of our normal enforcement process.

While we did not uncover evidence of widespread mis-selling, we did find that the risk of mis-selling and breaching market conduct obligations existed across all six banks. We identified a number of areas that banks must improve upon to better protect consumers.

● (1535)

For example, we expect the messages of consumer centricity disseminated by bank leaders to be better aligned with bank programs and their underlying infrastructure. We want to see them design compensation programs that encourage employees to work in the interest of their customers rather than perhaps the interests of sales targets, and we would like them to align their control and governance framework measures accordingly.

Going forward, the agency will monitor their progress on these and other recommendations. Although our report on the industry review has been released, our work continues. We will soon provide an institution-specific report to each of the six banks, and we will work to ensure that the necessary changes to mitigate the risks identified in the report are implemented. We are also planning a mystery shopping exercise to enhance our understanding of how the risk drivers we identified during our review may materialize.

[*Translation*]

Rounding out my introductory remarks, I will say that, as a result of the industry review, FCAC now has a deeper understanding of the context within which the financial institutions we regulate are operating. With this, we will enhance our supervisory capacity to be more proactive and to oversee organizations with increased rigour and skill.

To illustrate this commitment, we are currently preparing to implement a modernized supervision framework, which was informed by this review. In addition, we are increasing our supervision bench strength and enhancing our information for consumers about financial products and their rights and responsibilities.

I expect some of you have questions that will allow me to elaborate on these and other implications of our industry review. Mr. Bilodeau and I would be pleased to address them, at the chair's discretion.

Thank you.

[*English*]

The Chair: Thank you very much, Ms. Tedesco.

We'll start with Mr. Sorbara for seven minutes, please.

Mr. Francesco Sorbara (Vaughan—Woodbridge, Lib.): Thank you, Mr. Chair.

Welcome, Ms. Tedesco and Mr. Bilodeau.

For my first question, I want to have you elaborate on this. Did the FCAC receive the sufficient resources and the necessary co-operation from the schedule I banks?

Ms. Lucie Tedesco: I remember answering a question whether we felt we had enough resources left here at exactly this time when we were here before this committee. I'm happy to say, yes, we had the right number of resources, but it was close. Our staff was engaged, and some of our staff members are here with us today. They were engaged in many, many hours of overtime and burned the midnight oil working on this review. As I said, it was the most significant review we've ever done, and we did it without any consulting services, but it was tough.

What was the other part of your question, Mr. Sorbara?

● (1540)

Mr. Francesco Sorbara: Did you have the full co-operation of the schedule I banks?

Ms. Lucie Tedesco: Yes, we did. In fact, I spoke to each CEO, and each CEO gave me his word that we would get full co-operation. Their staff provided all of the documentation and were very responsive to the documentation and interviews we were requesting.

Mr. Francesco Sorbara: In your opening remarks, you highlighted the fact that each bank will receive its own assessment.

Ms. Lucie Tedesco: Yes.

Mr. Francesco Sorbara: Will that be made public?

Ms. Lucie Tedesco: No, it will not be made public.

Mr. Francesco Sorbara: Okay, thank you.

Within your opening remarks, you used the word "modern" or "modernization" of the rules that FCAC pertains to. Obviously, there are many things happening within fintech. Can you give us a broad outline or direction where we should be going in that respect to protect consumers from practices that may not be beneficial to their long-term interests?

Ms. Lucie Tedesco: Certainly, our new supervision framework will enable us to be more proactive, more transparent, and more predictable as a supervisor. It is risk-based. We're certainly counting on the fact that we will have what we call some risk profiles for each financial institution we oversee. We will put most of our efforts on those institutions that present the highest risk.

Mr. Francesco Sorbara: If I can interrupt, I do have one more question.

In reading the report, it seems to me that one of the conclusions, or the main conclusion I read, is that there are no systemic practices going on that are wrong, if I can use that type of term, in terms of sales practices, but that controls—or governance, which is a term I like to use—need to be strengthened.

I look at the report and say, okay, there are some good things happening because there aren't bad things happening, but at the same time, we need to be vigilant and to boost controls in respect to some sales practices, for example, with variable mortgage specialists, as they're called, who may just be compensated on a variable basis.

Is the way I'm looking at it correct? That's not for my own use, but is that what a reader of this report should discern?

Ms. Lucie Tedesco: I'm sorry again. I'm having difficulty hearing, Mr. Sorbara.

Mr. Francesco Sorbara: It's just in terms of the report highlighting that there are no systemic mis-practices going on in sales practices by the banks, but controls—governance—need to be beefed up. Is that correct?

Ms. Lucie Tedesco: Yes, that's correct.

During the course of the review, we did identify certain risks to consumers and ways to address those risks, but we did not find any evidence of a widespread problem with mis-selling or breaches of market conduct obligations. That doesn't mean we didn't find that risks existed across all six banks, and that doesn't mean we didn't find incidences of potential market conduct violations, which, if we did find—and I understand we did find some—we are currently investigating, and they are following our normal enforcement procedure.

Mr. Francesco Sorbara: I have one final question. In terms of this study and the standards that are in place currently, how do we compare to what banks in the United States, the U.K., or the European Union face in terms of the robustness of the protections that are in place for consumers?

Ms. Lucie Tedesco: In terms of comparing ourselves to our international peers, I would say that their consumer protection frameworks have probably evolved a little faster than ours, but the government is currently, I understand, consulting on a new consumer protection framework. That framework, which will evolve where the market has been and will presumably allow us to evolve with market changes, will certainly help to bring us to the same level of consumer protection.

● (1545)

Mr. Francesco Sorbara: Thank you, Ms. Tedesco and Chair.

The Chair: Thank you very much.

Mr. Albas.

Mr. Dan Albas (Central Okanagan—Similkameen—Nicola, CPC): Thank you, Mr. Chair.

Ms. Tedesco, thank you for coming here today and for the work you do for Canadians.

I have to say, Ms. Tedesco, that I'm a little disappointed in your report. Again, many Canadians have the feeling—and we heard them at this committee—that there are not sufficient structures in place. The report rightly says that there are different cultures among different schedule I banks. There are also some issues in terms of cross-selling that could be looked at.

More or less, when I read your report, Ms. Tedesco, the recommendations here, under "Conclusions and a look forward", really are just that: there are no actual solid recommendations that you've made to solve this issue. As a parliamentarian, I would imagine that the entire committee would like to put some teeth into recommendations that the government can either give your agency or put into greater oversight for consumer protections. This report seems to package this as being an issue, but not a big issue, and that "we're looking at it".

Could you inform me about what concrete steps you and your organization plan on taking in response in the coming days?

Ms. Lucie Tedesco: Sure. The report does outline a number of opportunities for us specifically to strengthen our oversight of banks' sales practices risk. In terms of this review and the next steps, what follows from what we've already done, we have the institution-specific reports that will be going out to them, and we'll be working to make sure that the recommendations that are in those institution-specific reports are implemented. We will also be doing a mystery shopping exercise this year to see if we can validate some of our findings. Then we will be cascading our review down to small and medium-sized banks.

Internally at the FCAC, I mentioned our new supervision framework, which will allow us to zero in on the banks that present more risk to consumers, and guide our efforts towards those financial institutions. We will also be increasing our bench strength in supervision and enforcement, and we will be enhancing our consumer education materials as well so they're aware of their rights and responsibilities and are able to make informed decisions about whether or not to buy certain products. We will continue to investigate those potential violations of the consumer provisions under the Bank Act.

Mr. Dan Albas: Ms. Tedesco, it sounds from your answer that this has been more about a review of the FCAC rather than the review of the issues that were raised by Canadians and the people who worked in many of these banks who raised the alarm bells around these issues.

Ms. Lucie Tedesco: I think your question was as to what the FCAC will do in the coming weeks. That takes care of our part, but we very much expect the banks to implement all of the things that we have raised in our report. That includes redesigning or taking a fresh look at their compensation and performance management programs to make sure that they motivate employees to work in the interests of consumers rather than the interests of a sale.

We're also looking at having them provide their senior management and boards of directors with more information on market conduct risk, a more comprehensive and holistic view of their sales practices and risks so they're able to make the right decisions. We're also looking at them to improve the monitoring of the complaints and the reporting of their complaints. Typically, they don't capture first-level complaints. I'm not sure what the percentage is, but it's probably 95% of complaints that are resolved at the first level. None of that information is captured. We think it ought to be captured because we think it's rich in information in terms of pointing to emerging issues and trends.

These are some of the expectations that we have of the banks.

● (1550)

Mr. Dan Albas: The Prime Minister said that sunshine is the greatest disinfectant. Do you think schedule I banks should be pressured to inform customers about sales targets and incentives presented to employees so as to increase transparency of the motives and sales tactics used by financial employees and their advisers?

Ms. Lucie Tedesco: My role as commissioner of the FCAC is really to administer and apply the legislation. That would be an opinion and a policy matter, and that is best answered by my colleagues at the Department of Finance.

Mr. Dan Albas: Again, I go back to your role as helping to protect consumers. Would that help protect consumers by having more transparent information about sales processes they enter?

Madam, you have no issue talking about the importance of getting more information and having boards of directors receive information about their sales practices, so it doesn't seem you have any issue talking about the use of information within your organization. Why not just allow Canadians to know more about exactly whom they're banking with and what their sales practices are in an institution? It seems to me you should have an opinion on that. You're there to defend those interests, aren't you?

Ms. Lucie Tedesco: I'm there to apply the legislation, so our sales practices report does just that. It advises consumers of the risks that are involved with the various sales practices that can be adopted by the financial institutions.

Mr. Dan Albas: Well, Madam, I do appreciate that you run an organization that is a creature of legislation. However, I'm a little disappointed as to the tone of the report. I would have expected there to be a little less focus on your own individual workings and a little more on the banks, because that's actually where people are having these issues. I'm going to be asking questions in an upcoming round that are a little more specific about some things that can be improved upon. To me as a parliamentarian, it's hard to make good recommendations on how we can improve the system, Mr. Chair, if there's only a general direction that, yes, things aren't great, but we're getting better. That, I don't think, is necessarily going to address the concerns we were articulating.

Ms. Lucie Tedesco: But the banks have to get better as well, and we mentioned that quite strongly in the report.

The Chair: Okay. That's the round for Mr. Albas, I take it.

Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault (Sherbrooke, NDP): Thank you, Mr. Chair.

I would like to thank the witnesses for being here and for their work on this matter, a job that must not have been easy because it always comes back to the dilemma that a bank employee faces, as we have seen in various testimonies.

In fact, employees must sell financial products and, for several clients, these employees are experts in the field. So you trust your bank advisor. These same people are also under pressure from their employers to sell these products. They must achieve results and, at the same time, they must advise their clients independently or in the most informed way possible. So it mustn't have been easy to try to resolve this situation, which completely opposes two interests.

I understand that, among everything you've examined, there were 4,000 testimonies.

Ms. Lucie Tedesco: We reviewed 4,500 complaints and conducted over 600 interviews with employees.

Mr. Pierre-Luc Dusseault: Of these 4,500 testimonies, or complaints, and 600 interviews, did you detect any serious misconduct or failure on the part of a bank, either in its practices or in the specific case of an employee who failed to meet his or her obligations?

Ms. Lucie Tedesco: If we discovered any potential violations such as the ones you just mentioned, these cases are currently under investigation. However, I'm not aware of what happens in the investigations because of my quasi-judicial role.

● (1555)

Mr. Pierre-Luc Dusseault: Do you know how many cases have been investigated?

Ms. Lucie Tedesco: I don't.

Actually, this isn't information I should know about because of my quasi-judicial role. I will have to render decisions if those files end up on my desk.

Mr. Pierre-Luc Dusseault: In recent years, before you undertook this review, how many cases were subject to penalties, fines or disciplinary measures? How many cases have gone through the investigation stage and reached you?

Mr. Richard Bilodeau (Director, Supervision and Promotion, Financial Consumer Agency of Canada): To answer your specific question, during the last fiscal year, eight violations were noted by the agency, leading to three commissioner's decisions. However, this doesn't include various investigations we conducted during the year, which were resolved through other mechanisms available in our compliance framework.

Mr. Pierre-Luc Dusseault: What penalties were imposed for these three decisions?

Mr. Richard Bilodeau: Well, according to the statistics, over the past year it has been about $650,000. I believe that, over the past five years, the total penalties have reached $1.6 million.

Mr. Pierre-Luc Dusseault: Is it all related to mis-selling practices or does it include everything else?

Mr. Richard Bilodeau: This relates to all possible contraventions of the consumer provisions in the Bank Act.

Mr. Pierre-Luc Dusseault: Were any of them really about the banks' mis-selling practices?

Mr. Richard Bilodeau: There is no concept of mis-selling practices in the Bank Act. Instead, it contains very specific provisions, such as provisions relating to disclosure with respect to a consumer or information that would not have been clearly communicated in a manner that would not be misleading. There is therefore no concept of mis-selling in the act, but specific provisions.

Mr. Pierre-Luc Dusseault: Right.

Do you know which banks were the subject of the last three decisions totalling $650,000?

Mr. Richard Bilodeau: The bank's identity wasn't given in the context of these decisions.

Mr. Pierre-Luc Dusseault: Okay. Why?

Ms. Lucie Tedesco: Section 31 of the Financial Consumer Agency of Canada Act leaves it to the commissioner to publish the name of the financial institution, the nature of the violation and the amount of the penalty imposed. This is a very important tool for FCAC's flexible approach to promoting and ensuring compliance with consumer provisions.

Several factors are taken into account when considering whether to implement this discretion. Is this a very serious case? Did the bank cooperate with us in the investigation? Is there an impact on consumers or on their confidence? What is the deterrent effect? Has the bank made a commitment to quickly remedy violations of the act? Does it take responsibility for its actions? Did it provide a remedy for consumers?

Since our regime isn't punitive, I don't use this discretion to punish the bank—

Mr. Pierre-Luc Dusseault: You still handed out fines totalling $650,000. I think that's a punitive regime.

Ms. Lucie Tedesco: Pardon?

Mr. Pierre-Luc Dusseault: Given that you can impose a financial penalty, that's still a punitive regime. We will agree that $650,000 isn't excessive for banks that report billions of dollars in profits every year.

What would the consequence be if you named a bank?

● (1600)

Ms. Lucie Tedesco: I'll continue my response.

When I decide whether or not to name a bank, I make sure of three very specific things. What will make the bank return to compliance? What will change the bank's behaviour? What tool will help me get the best result for consumers? If a bank needs to be named, I'll name it.

I can assure you that, with this approach and our interventions, consumers have been reimbursed $21 million over the past two years.

Mr. Pierre-Luc Dusseault: Do you think it would be worthwhile doing what we do for restaurateurs?

In the case of restaurants, it is easy to find on the Internet a list of restaurants that have been fined or had their wrists slapped by the Canadian Food Inspection Agency. This allows the consumer to know which restaurant is the best or, in fact, which one has not had a safety penalty.

Do you think that, when consumers shop around for a bank, it would be good for them to know which banks are the best performers and which ones have received the fewest slaps on the wrist from regulatory agencies, as is the case when they choose a restaurant? Don't you think that's important for the consumer?

Ms. Lucie Tedesco: Of course. That's a good point.

[*English*]

The Chair: We're well over time, but I felt it was a good line of questioning, so we let it go.

Mr. Fergus.

[*Translation*]

Mr. Greg Fergus (Hull—Aylmer, Lib.): Thank you, Mr. Chair. So when I ask questions and you cut me off after exactly seven minutes, it's because you don't like the series of questions I'm asking.

Mrs. Tedesco and Mr. Bilodeau, thank you very much for being here. I appreciate the work that the FCAC is doing on behalf of Canadians to ensure the health of our financial system.

Like my three colleagues who have just asked you questions, I also have some concerns about the findings in your report.

First of all, I want to congratulate you on defining mis-selling. You say it is "the sale of financial products or services that are unsuitable for the consumer". You went even further in that direction. You also say that "the controls banks have put in place to monitor, identify and mitigate these risks are insufficient".

My question is very simple. Why didn't you just say that the banks wouldn't be named, that no one said it was a problem?

Ms. Lucie Tedesco: I'm sorry, but I didn't understand. I had difficulty hearing the last question.

[*English*]

The Chair: These rooms are very hard to hear in. There's an echo, and it's sometimes difficult to hear, so you're better off to have the earpiece in.

Channel 3 is the floor, which will give you both English and French.

[*Translation*]

Ms. Lucie Tedesco: Thank you.

Could you repeat just the last part of your question?

Mr. Greg Fergus: Why didn't you find that Canadian banks were using abusive sales practices?

● (1605)

Ms. Lucie Tedesco: We need to go back to the purpose of the study.

I'll speak in English instead.

[*English*]

The purpose was to identify the drivers of sales practices that could increase risks of mis-selling to consumers and of violations to legislation and regulations. That was the objective. It was not to find abusive practices by the banks. This was to identify what in the banks' cultures were the drivers that influenced sales practices that could increase risks to consumers.

[*Translation*]

Mr. Greg Fergus: In your report, you say that "the retail banking culture is predominantly focused on selling products and services, increasing the risk". You also mention that retail banks have started to move away somewhat from sales results to focus… They are getting back on the right track and have taken the initiative to correct the situation. However, there were abuses when you did your review.

It seems that having sales targets and objectives using these tools leads to abuse, almost by definition.

Ms. Lucie Tedesco: What we found was that the banks' culture was really very focused on selling financial products and services.

[*English*]

It was that employees are motivated to sell, and they're rewarded for their sales success. It was that sharp focus on sales that really increased the risk of mis-selling to consumers and the risk of violating market conduct obligations.

As well, we looked at what underlies the culture. Why is there a sales culture? We identified and looked into what I call all the underlying logistics that did not align with, let's say, a strong tone at the top of customer centricity. These were areas, as I mentioned before, such as the compensation programs and the way they are designed and the way the performance management programs are designed, being designed around sales targets and selling particular products and services. That in and of itself increases the risk to consumers.

Also, the movement of consumers to the Internet to do their banking online now has caused the banks to essentially close many of their branch offices and consolidate their branch offices into banking centres. These banking centres are focused on providing advice and ultimately selling products, so this business model shift, as well, aligns with a sales culture. There were certain products, certain distribution channels, and certain practices, as well, that supported this culture of sales with the banks.

All the underlying training material, their procedures, and some policies supported a sales environment. That's why they had a sales culture.

Mr. Greg Fergus: Madam Tedesco, following on the comments you just made, I agree. I think Canada's banks are really a model of stability to the world. Our banking sector survived a global meltdown about 10 years ago that consumed a lot of other banks in other countries. They've also made a successful transition to providing more online services, as you mentioned, which we can understand is a more competitive process, but they've done this and also made a lot of money. As a matter of fact, they've made record amounts of money at the same time.

I believe there's a bit of an unwritten convention that, as we provide that stable framework under which our schedule I banks would operate, it's fine for them to make money, but we want to make sure that they're not carrying out practices that undermine confidence in the whole system and fleece individual Canadians.

Do you feel we're at the stage where we would have to turn those unwritten conventions into written conventions, or is there still an opportunity for our banking industry to make self-corrections, so we don't have to go there?

● (1610)

Ms. Lucie Tedesco: I would say that we examined 4,500 complaints, and those complaints were not limited to the six big banks. They were complaints that we'd received on express consent and disclosure. Certainly, based on those complaints and a review of those complaints, they're being investigated, and that's an enforcement action, and they're being enforced.

I'm not sure if I'm answering your question.

Mr. Greg Fergus: I'm just trying to figure out whether we have reached the point where, if these practices were to continue, we would need to consider increasing the oversight role of your organization or there is still an opportunity for banks to self-regulate.

Ms. Lucie Tedesco: Just as an aside, and to answer your question, we oversee at the FCAC very specific provisions under the Bank Act. They're called the consumer provisions. Those provisions are very, very specific and make up largely a system that is essentially a protection regime that is based on disclosure and some business practices. I think what your question is directed at is more the business practices of the banks. We have a few regulations on bank practices, but we don't have many, so we can't exceed our mandate and investigate things that we're not entitled to investigate.

The Chair: With that, you're well over time, Mr. Fergus.

Just on this line of questioning though, and I understand you can't go beyond your legislated authority, I think you'll find among some people in society, whoever they might be, that the banks are never challenged. You're the Financial Consumer Agency of Canada, and people believe you are there in legislation to protect the little guy, whether it's right or wrong. When you're not seen as protecting the little guy, then more and more of the public become disillusioned with what the FCAC is doing, and whether or not the government is protecting the big banks and not protecting them. That's the risk we run here. If there needs to be more authority in the legislation, then we need to know that.

There's been a fair bit of discussion on both sides about these sales practices. If I hire somebody, I expect them to sell. If I have somebody on my farming operation selling my product, I want them to sell it. Yet we read in the CBC report that some of the sales people felt desperate to meet sales targets, which is probably true too. How do you find the balance?

What I'm more worried about is if anybody in the public starts to feel that the government or the FCAC or any of the other regulators are not providing enough protection for the little guy because they happen to be the big powerful banks, then we have a real problem. I think that's where we are.

Mr. Kelly.

● (1615)

Mr. Pat Kelly (Calgary Rocky Ridge, CPC): Thank you, Mr. Chair.

My line of questioning really comes out of some of the remarks that the chair and Mr. Fergus made, around a certain amount of discomfort that consumers may have around their choices. You have this system in Canada with six large schedule I banks. We've talked about the regulation of these institutions to ensure that consumers are looked after, but there's another way that consumers are protected. That's through a competitive marketplace. If six large banks, by all means, compete among themselves, they also ought to be challenged. The chair spoke about who challenges the banks. Well, competition ought to challenge the banks. The banks do compete with other entities in the mortgage industry, monoline lenders, credit unions in Alberta with Alberta Treasury Branches. Other entities are capable of challenging the banks and ensure that consumers get the products they need.

Yet the Bank Act exempts many other players that challenge the banks for their business. They're exempt from provincial regulations that regulate the conduct of mortgage brokers or insurance brokers or other entities. Have you examined the role of competition and whether or not the Bank Act exemption for the banks limits competition?

Ms. Lucie Tedesco: No, we have not. This is the responsibility of the Department of Finance.

Mr. Pat Kelly: Okay, but banks do compete with mortgage brokers. I'll pick that example because it's the one I'm most familiar with on a national level and in particular in my home province. The industry is somewhat seized with questions of product suitability, which you've identified, so this is not an even playing field. These are provincially regulated entities trying to compete with this small group of large lenders. Have you examined differences in how those that compete with the banks have to address things like product suitability?

Ms. Lucie Tedesco: That's a very good example of a provincial jurisdictional area that has, let's say, a requirement of product suitability in their legislation, while we do not have this requirement in our legislation.

In January 2017, you'll recall that the Minister of Finance tasked me with consulting with all the provinces with a view to identifying the best practices in consumer protection and to ensure that the federal protections were as strong, if not stronger, than the provincial protections. We consulted, I consulted, with the provinces, and I provided the minister with my report at the end of May last year. That report did identify captured data and did identify a number of tools and powers that are in effect in the provinces that we don't have with our federal regime. By providing the minister with the report, I can only suspect that this is informing his policy-making on the new —

Mr. Pat Kelly: Okay. However, at present then, as a result of this survey of provincial regulation, in certain areas, there is actually a lower regulatory bar for the banks that you regulate than some of their competitors in the provinces.

Ms. Lucie Tedesco: There were some gaps. Some protections were stronger in the federal regime, but some were not, so there were some gaps in those. They've been highlighted for the minister in our report and we suspect that those are being taken into consideration in the new consumer protection framework.

● (1620)

Mr. Pat Kelly: I'm running out of time and I certainly don't want to go over, Mr. Chair.

In your findings, the area of creditor insurance is a big one when it comes to the cross-sell with financial institutions. It even spills over when delivery models, such as mortgage brokers for example, are also compensated in the sale of insurance, in some cases. The commissions and the profits on creditor insurance can exceed the profits and compensation for individuals to the actual credit product that it deals with. Does this concern you, as far as how that affects motivation in sales is concerned?

Ms. Lucie Tedesco: Yes, absolutely.

Mr. Pat Kelly: The tail wags the dog.

Ms. Lucie Tedesco: This is definitely one of the products that we identified as problematic. It's a high risk to consumers. We are actually looking into complaints and will be looking into this product more deeply. This product might be good in some circumstances, but it's often sold without the appropriate explanation as to how it works or its products or services. Sometimes people think that they're getting it for free. For us, they cross the line when they don't obtain the consumer's express consent when purchasing this product and they cross the line if they don't provide the level of disclosure that is required by the regulation and the legislation. They cross the line if they're not giving—

Mr. Pat Kelly: The bank is exempt from some of that. The bank will have a different bar from what provincial insurance regulation would have. They are exempt. The Bank Act exempts financial institutions.

The Chair: If you want in, go ahead.

Mr. Richard Bilodeau: Sure. There is a regulation that flows from the Bank Act that requires a bank, when selling an optional product—for example, if you're selling creditor insurance as an optional product to a credit card—that you do so in a way when you're trying to get express consent from a consumer that you do get proper consent from the consumer, but that you get it in a way that's clear, simple, and not misleading. Those apply to banks selling creditor insurance, as an optional product to another main product.

Mr. Pat Kelly: They are exempt from provincial insurance brokerage law, which they would otherwise be required to—

Mr. Richard Bilodeau: For example, for hypothetical purposes, if a bank that we regulate sells a product and doesn't abide by one of those criteria—there are a few of them—then they are in breach of those regulations. Any exemptions don't apply to that bank, if they're selling an optional product.

Mr. Pat Kelly: Okay.

That's good.

The Chair: Mr. Grewal.

Mr. Raj Grewal (Brampton East, Lib.): Thank you, Mr. Chair.

Thank you to our witnesses for coming today.

We've had this discussion before at this committee in terms of consumer protection at banks. I know people who work at the big five banks. I've had a lot of discussions with them. This is not to pick on a certain green bank, but if you walk into their bank and you want to simply deposit something, the second question will always be, "Are you thinking about investments? Are you thinking about a mortgage? Are you thinking about refinancing your debt?" I always found that inexcusable because I've gone to the bank to do something specific and then I get bombarded with all this other information.

I'm okay as a consumer because I am somewhat educated and I know what I'm talking about, but I can only imagine if my father or my mother went in. I represent a community where 86% belong to a visible minority. There is a big immigrant population and a lot of seniors who can be taken advantage of. I don't think we're doing enough in terms of the banks. The banks are obviously going to push the sales activity because that helps their bottom line. We need to do more from an agency perspective to rope them in or to get them to be accountable for their behaviour.

Ms. Lucie Tedesco: Again, to the extent that they cross the line and violate the legislation and the regulations that are currently in place, we take the appropriate enforcement action. There are things outside the scope of what we do that the banks do that we cannot enforce or note them in violation for.

● (1625)

Mr. Raj Grewal: Yes, and I think that's part of the frustration.

I'll give you this small example that annoys me every time I go to the bank. You go to the bank to ask for a certified cheque, and they charge you $7.50 for the certified cheque. The purpose of a certified cheque is to say that the money's been withdrawn from your account, and it's certified, so there shouldn't be a hold when you deposit it into a trust account to buy a house or use it as a down payment, or deposit it into another account, or if you're paying somebody back. Yet, the other bank, or even the same bank, will place a five-day hold on it, even though the funds are certified. What's the point of paying $7.50 for a certified cheque if the funds aren't actually certified? I could write a personal cheque for the exact same process.

I bring this up every time I meet a teller and they charge me $7.50. It is absolutely wrong. They are charging fees for no reason. They say I have an unlimited banking account, yet I get charged $14.95 every single month, and I do *x* number of transactions and I get charged a bonus. It's absolutely ridiculous. The banks are robbing consumers blind. More needs to be done.

The Chair: Do you ever check the competition, Raj?

Mr. Raj Grewal: No, but I also said that—

The Chair: It wouldn't hurt to check the competition.

Mr. Raj Grewal: I've done the competition thing, except for the fact that the big five banks dominate the competition by branch level. They also have a monopoly because in Brampton East the big five are everywhere. You're going to go to a bank that you can walk to, that you have a personal relationship with. The banks are super clever. Do you know why? When I go into my branch, I can speak Punjabi. I can speak Hindi. I can speak English. It's really easy. If I were a teller and a senior came in and I was being paid based on bonuses, do you know how great my bonus would be because my Punjabi is so good? It would be phenomenal. That is something on which we need to do a better job.

The Chair: I don't know, Ms. Tedesco, if there's anything you can answer there or not, but the floor is open.

Ms. Lucie Tedesco: I was just going to say that the bank fees are not regulated.

The Chair: Richard, go ahead.

Mr. Richard Bilodeau: The FCAC has a great account selector tool that can help consumers select the right account for their needs. It's a very useful tool.

The Chair: Go to that website and you're away.

Do you have any further questions, Mr. Grewal?

Mr. Raj Grewal: No. My fiancée works at one of these banks. I'm going to ruin her career if I keep going.

Voices: Oh, oh!

Ms. Lucie Tedesco: I would say that the relationships that the millennials are developing with their banks are very different from what we perhaps have been used to.

Mr. Raj Grewal: Yes, I agree. My friends don't go into a branch. Everything's done online.

Ms. Lucie Tedesco: They don't go into a branch. My son doesn't go into a bank either.

The Chair: Thank you.

Mr. Albas.

Mr. Dan Albas: Thank you, Mr. Chair.

Ms. Tedesco, earlier you mentioned to my colleague MP Kelly that there was a clear case where the banks had crossed the line. I go back to my earlier comments that it's very interesting that we have to ask you the questions for you to point out when a line is crossed, when in your report it doesn't seem to illustrate that as strongly.

We're obviously in the 21st century, not the 20th century, so I would imagine that consumer protection is not a new concept whatsoever. You recommend as one of your enhancements to the banks' management of sales practices risk to "prioritize financial consumer protection, fairness and product suitability". To me, that's a simple given.

There is the issue of agency. Who does someone work for? The chair raised this earlier. What's happened in other fields, for example, whether it be a lawyer or doctor, mortgage professional in some provinces, or a CPA?

You mentioned in this report that one of the challenges of tracking problem persons who may have caused harm is that if there's an investigation by the bank, they leave and the investigation is closed. In these other industries, it doesn't matter if a lawyer or a doctor or a CPA leaves a company, if they violate their professional standards, there is a way for consumers to hold them to account.

Mr. Kelly also raised that certain provinces have certain requirements for education and ongoing professional development that are largely exempted in the banks through the Bank Act.

We seem to know what some of the challenges are. They're just not being voiced. Do you think we, as a committee, need to investigate these practices further? What's your recommendation?

● (1630)

Ms. Lucie Tedesco: In terms of sales practices, the committee will decide what the committee would like to do. I'm not sure I'm in a position to recommend what the committee should or should not do.

Mr. Dan Albas: A committee member has asked you what you think, and you've told us that there are cases where there has been a line crossed. You told us that there are some issues in here.

Ms. Lucie Tedesco: Yes.

Mr. Dan Albas: But you've given us general—I would say sanitized—bullet statements of what should be happening. We've heard from people who say that is not always happening.

Ms. Lucie Tedesco: These are matters that are under investigation. When matters are under investigation, I don't know about—

Mr. Dan Albas: Can't you recommend that these are things we may want to recommend to the Minister of Finance?

Ms. Lucie Tedesco: I'm sure that I have a very able team here with Richard. If any potential breaches have been identified during the review, he's looking after them.

Mr. Dan Albas: Okay.

Earlier you said to Mr. Kelly that there was a report you've written to the Minister of Finance outlining steps that could be taken. Is that report public?

Ms. Lucie Tedesco: Yes.

Mr. Dan Albas: Okay. That's very helpful to us. I'd like to see it, and perhaps you could pass it on to the clerk—

Ms. Lucie Tedesco: Yes, of course.

Mr. Dan Albas: —because I think there are some issues.

I talked about transparency of sales practices of the banks. I'd like to ask a few questions about the FCAC.

Since November 2016, how many breaches of market conduct has the FCAC investigated? How many of those breaches have been verified, and what fines or punitive actions have been levied as a result?

Mr. Richard Bilodeau: I don't have the exact numbers since November 2016. I can tell you that in fiscal year 2017-18, so April 2017 to this past March, we investigated over 130 incidents of potential breaches to the Bank Act. Sometimes investigations overlap in two fiscal years. In 2017-18, there were eight violations that were essentially upheld by the commissioner through three decisions.

In addition, there were a number that were addressed through other means. For example, we have a number of administrative tools outlined in our compliance framework. Depending on the significance of the breach, we can issue letters of concern, which is an administrative tool. We can use action plans. For example, if we identify a specific issue with a control that caused the breach to happen, then we can work with the institution, telling them that we expect them to do *x*, *y*, and *z* to rectify a control to avoid these breaches. These are reduced to paper. We track those, and we work with the institution to ensure they fix the issues. When that's done, we close the action plan.

We use a variety of tools when we are faced with investigating breaches. Not all of them go to what we call a notice of violation, a notice of decision. That said, throughout all the various tools we use, the commissioner referenced earlier that over the last two fiscal years, through the supervision work and enforcement we've done, consumers have been reimbursed over $21 million.

The work we've been able to do, the way we've used our tools, has generated that result for Canadians.

Mr. Dan Albas: I appreciate the straightforward answer. If you wouldn't mind also sending to the committee, to the chair, the last two verified years that you can that are on record so that we have a good idea of year over year, that would be most welcome.

● (1635)

Mr. Richard Bilodeau: Absolutely.

Mr. Dan Albas: We go back to the issue of bundling or misselling. In the report, there's a specific reference to young people when they're getting a credit card, that it comes with credit protection, but that they're not always informed that that's an extra service. First of all, why wouldn't there be some sort of recommendation from you? That, to me, seems to be a problem. Why would there not be a recommendation that this be looked at?

Why are there no specific recommendations? You have specific cases where there are issues. We're supposed to write a report on this. If we don't have recommendations from the experts, it's going to be very difficult to make good recommendations to the policy-makers.

The Chair: Go ahead, Mr. Bilodeau.

Mr. Richard Bilodeau: Thank you.

With regard to credit insurance, because I think that's what your question was about, I think one of the issues that we've identified in the report is that it's a product that's usually sold rather than bought. It's not a product for which a customer will particularly call in to the bank and say, "I'd like credit insurance for my credit card." When that happens, I think that in the context of that consumer being in a position where he's being offered this product in addition to getting a credit card, it's important that the information that the bank communicates to the consumer about the product be clear, simple, and not misleading. That is a legislated requirement. It's in the regulations. The banks have to be transparent when they're trying to secure the person's consent.

We've identified some issues in the report about being clear that if you're getting what they refer to in the sector as a free look period, where the first 30 days are essentially free, you're not charged if you don't keep the product. That needs to be communicated in a way that's clear, simple, and not misleading.

The recommendation is really that that's the legislation. Banks need to abide by those requirements.

The Chair: Thank you.

Mr. Dan Albas: I have one other question.

There is also the concern raised about in-branch versus a call centre. With call centres, it seems—and I would imagine that it's because the capacity is there—that everything that is said is recorded. If people know that they're being recorded and their only primary language is, obviously, what they say to someone—auditory—they're going to be very careful about what they say and how they present a product. Obviously, they have a script in front of them that they're able to follow to a T. I think most Canadians would be quite alarmed to find that a similar kind of scrutiny is not available for within branch.

Again, I would say that it would be helpful for the FC'AC'.... If you are able to articulate that there is a difference and that there is a problem, why would you not recommend some sort of solution that we could look at? I know you said many times today, Ms. Tedesco, that you can only work within the laws that you have, and, again, I appreciate that. However, going back to Mr. Easter's comments about your being the head, many of us at this table and many Canadians would hope that the FC'AC' would be the vehicle for voicing concerns and making suggestions on how things could be made better. It may not be within your capacity, but certainly if there is a problem, I think people would expect you, as the first person, to voice it.

The Chair: Mr. McLeod.

Mr. Michael McLeod (Northwest Territories, Lib.): Thank you, Mr. Chair.

Thank you to the presenters here today.

I'm a little bit worried. There was quite a large number of complaints made on the practices of the banks, or at least to me it seems to be a large number, 4,500. It doesn't seem that we've been able to be all on the same page when it comes to looking at what was being raised as a concern.

With regard to the 4,500 complaints, were they all in the same area? Is that part of the issue? Are there different categories that these complaints fell in and, if there are, could you maybe bundle them up for me so that I can understand it?

Ms. Lucie Tedesco: Richard, please speak and complete my answer.

My understanding is that those 4,500 complaints were all around express consent and about the alleged product being purchased without consumers' consent.

Mr. Richard Bilodeau: I would just add that in addition to that aspect of it, it may also be a consumer who, when they complained to their bank or to the FC'AC', said they didn't understand what they were buying.

Mr. Michael McLeod: Okay.

We had 4,500 complaints. You did an investigation, and following the investigation there were a lot of things being said about people not being happy. The Canadian Foundation for Advancement of Investor Rights is saying that the review was too general, and that the recommendations were so vague. I'm just wondering if your mandate allowed you to look at the real core of what is being expressed here out of the 4,500. Were you able to look at what they're raising as a concern, or did your investigative mandate not allow you to go far enough? I'm just not clear on that.

● (1640)

Mr. Richard Bilodeau: It's a good question.

Just to start quickly with the source of the complaints, those are complaints the banks are required to report to us. They're also complaints that we had internally at the FC'AC'. We get numbers from the banks. We asked the banks to give us every single file they had in relation to these complaints so that we could look through them, and we looked through all of them. By the way, that included listening to actual phone calls the consumers had with the banks to understand what was happening.

Those complaints fell within an area that we oversee. They were things that we are able to address, if the evidence supports it, obviously, through the various mechanisms that we have. These include administrative tools or even, if the investigation leads this way, notice of the violations and, eventually, decisions that the commissioner will have to render. We were able, and we are able. That work is continuing with those complaints.

Mr. Michael McLeod: How many of these 4,500 complainants did you talk to?

Mr. Richard Bilodeau: I could not tell you a number today.

Mr. Michael McLeod: Are you talking to them? Have you talked to a large percentage of them?

Mr. Richard Bilodeau: Typically, the way we do our work is to look at it in general. We don't sanction individual issues with complaints. We look at areas where there are more than just a few people impacted. We try to understand what the issue is, what the root cause of that breach is, and address that root cause through the tools that we have. If it requires us to speak to a consumer, we'll do that. For example, we have recorded calls—one of the members referenced that earlier—and oftentimes, you actually have a conversation that you can listen to.

Mr. Michael McLeod: Why are we still hearing that the investigation just didn't meet the complaints that were being voiced? We have bank employees who are saying that the pressure is still on, that nothing has changed, and that they're disappointed in the review. Why are we hearing that? If the banks are being investigated, you would think things would have changed.

Mr. Richard Bilodeau: I think we need to separate the two issues. The review was really aimed, as the commissioner explained earlier, at identifying the risk drivers, and that could lead to a bad consumer outcome. In the context of that, the report is very clear. We found that it's the sales culture within the banks that's very sharp for certain areas, like mobile mortgage specialists cross-selling creditor insurance to third parties. That is definitely the culture there. Some employees told us so.

Mr. Michael McLeod: So the comment that banks are not there to look after customers' interests is what you're saying.

Mr. Richard Bilodeau: I think what we said in the report recommendation is that they need to pay more attention to that.

Mr. Michael McLeod: You also said that the report didn't address alleged breaches of market conduct obligations. What does that mean? What kind of breaches are those?

Mr. Richard Bilodeau: For example, if we identified breaches through our review of the 4,500 complaints, those are not addressed in this report. Those are on that separate track for investigative purposes. When my team's done with that work, we'll make recommendations to our deputy commissioner, and eventually, to the commissioner.

Mr. Michael McLeod: That's being done by your organization, right?

Mr. Richard Bilodeau: That's being done by us, yes.

Mr. Michael McLeod: So we may see further resolve.

Mr. Richard Bilodeau: Absolutely. Eventually decisions, if there are decisions, are published on our website.

Mr. Michael McLeod: When can we expect those?

Mr. Richard Bilodeau: I wouldn't want to give you a timeline because it is an investigative process. There are statutory deadlines in the act that say we have to issue violations within two years of a matter being known to us, but there are appeals within the act, so I wouldn't want to promise you a timeline on that and not be able to hold to it. What I can tell you, however, is that it is a priority for my team to investigate the issue. It's very important that we understand the issue. We want to make sure that we've collected all the evidence. We want to make sure that, when we come up with our decision, it is robust and is based on the evidence available to us.

Mr. Michael McLeod: Thank you.

The Chair: Ms. Tedesco.

Ms. Lucie Tedesco: If I may, Mr. Chair, I just want to comment on something Mr. Albas said when he talked about the control .

When you talk about the controls in call centres where you know they're perhaps more rigorous than in the branch, that's exactly what our review found. What we will be doing is working with the banks. One of the findings was that their controls need to be strengthened to mitigate that risk. Our employees listened to over 26 hours of calls in the call centres. You said they're very much on script. Yet sometimes they go off script, and you wouldn't believe that they go off script and some of the conversations that happen with consumers. But we did point out the heightened risk of not having the proper controls in place, whether it's with mobile mortgage specialists who aren't really attached to anything, or branch offices where the managers are essentially the trainer, the compliance officer, and the sales manager. They need to buttress their controls in those environments absolutely.

● (1645)

The Chair: The last questioner will be Mr. Dusseault.

[*Translation*]

Mr. Pierre-Luc Dusseault: Thank you, Mr. Chair.

To start, I'd like to learn more about your organization. Where does your annual budget come from?

[*English*]

Ms. Lucie Tedesco: Our expenses are paid through assessments of the financial institutions.

[*Translation*]

Mr. Pierre-Luc Dusseault: So it's the financial institutions that cover your annual operating expenses.

Ms. Lucie Tedesco: Yes. They also do it for the Office of the Superintendent of Financial Institutions, OSFI.

[*English*]

It's essentially to shift the burden of paying for financial sector regulations to those who are being regulated. The fact that assessments are paid by the financial institutions is an international best practice as well.

[*Translation*]

Mr. Pierre-Luc Dusseault: Don't you think that, to have public confidence, it would be important to avoid any appearance of conflict of interest between your organization and financial institutions? Don't you see as a problem the fact that you are being financed by the banks and that, in return, you are responsible for asking them to respect the rules? Don't you see any problem with that?

Mr. Richard Bilodeau: I can say this: the banks have no choice. The act requires them to pay these amounts, which are established according to a certain calculation, detailed in the regulations. No matter what decision or decisions the commissioner may make in enforcement cases, financial institutions must still pay. They don't have time to say that it has no appeal to them anymore: they must pay.

Mr. Pierre-Luc Dusseault: Okay.

Another issue that has been raised is the fact that your report doesn't really use the word "recommendation". We don't see the word "improvement" anymore, at least in French. We are talking about findings, conclusions and improvements. With regard to these areas for improvement—I count six on the last page of the report—who will be responsible for follow-up? Will there be a report on whether there has been progress? It is all very well to propose six improvements, but who will ensure their implementation if it is not the government or the Committee?

Ms. Lucie Tedesco: In fact, we will ensure that all recommendations are implemented, both the general recommendations and those specific to each financial institution. Our follow-up with financial institutions will therefore consist of a bulletin, if you wish, that we will give to them after our review. Then we will have to ensure that they implement the recommendations.

Mr. Pierre-Luc Dusseault: What will happen if one or more banks don't implement these improvements? Will we find out?

Ms. Lucie Tedesco: We haven't decided what we'll do. However, we will certainly advise our minister and ensure that this is included in our annual report.

Mr. Pierre-Luc Dusseault: I was wondering if consumers should be made aware when, for instance, the employee in front of them has a bonus or a performance bonus. You answered a little earlier. If it's a policy, can you generally say that it would be good for consumers to know more? If they can't get that information, it seems to me it would be nice if the employee at least disclosed to them that the employee is getting a bonus for what he or she is selling them.

● (1650)

Ms. Lucie Tedesco: We are all aiming for transparency, and I know that, for our part, we are trying to be more transparent. In my opinion, transparency in the market is always a good thing.

Mr. Pierre-Luc Dusseault: To do that would require a legislative change.

Ms. Lucie Tedesco: It has to be more political, yes.

Mr. Pierre-Luc Dusseault: This may require some additional disclosure when a product is sold to the customer. If you can't decide, the Committee can look into it.

That's good. Thank you.

[*English*]

The Chair: With that, is there anything that you want to add, Mr. Bilodeau, or Ms. Tedesco?

Okay, all in, all done. Thank you very much for appearing and for your report, first of all, and for the discussion today. The committee will determine where it goes from here on this particular issue.

The meeting is adjourned.

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